

Notice of Allowability

Application No.

09/688,371

Examiner

Shanon Foley

Applicant(s)

COTTEN ET AL.

Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 11/21/03.
2. ☒ The allowed claim(s) is/are 2, 4-16, 41-54, 56 and 57.
3. ☒ The drawings filed on 12 October 2000 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

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EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Peter Jackman (Reg. No. 45,986) on May 14, 2004.

The application has been amended as follows:

Claims 17-40, withdrawn from consideration due to a nonelected invention, have been cancelled.

Claim 2 has been amended to recite:

A recombinant CELO virus or CELO virus DNA, characterized in that the [region spanning] virus or DNA comprises a CELO wild type genome, wherein the genome contains at least one deletion, said deletion consisting of nucleotides 37,391 - 37,972 of the CELO wild type virus genome [is deleted], wherein said deletion results in a complete loss of Gam1 expression or prevents the expression of a functional Gam1 protein, wherein the genome can be complimented by heat shock or heat shock protein 40.

Claim 41 has been amended to recite:

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A recombinant CELO virus or CELO virus DNA, characterized in that the [region spanning] virus or DNA comprises a CELO wild type genome, wherein the genome contains at least one deletion, said deletion consisting of nucleotides 36,818 - 37,972 of the CELO wild type virus genome [is deleted], wherein said deletion results in a complete loss of Gam1 expression or prevents the expression of a functional Gam1 protein, wherein the genome can be complimented by heat shock or heat shock protein 40.

The following is an examiner's statement of reasons for allowance:

As set forth in the amended claims, the instant deletion results in a CELO virus genome that can be complementable by heat shock or heat shock protein 40. This was not known to be possible in the prior art, see pAIM45 of Michou et al. in Table 2, where a deletion comprising the instant deletion claimed resulted in a replication-defective virus.

Baker et al. only hypothesize what Gam1 is, see column 3, lines 26-30 and column 8, lines 5-11. Therefore, the skilled artisan would be unable to immediately envisage the range claimed because the range taught by Baker is not taught with sufficient specificity to anticipate the instant range of nucleotide deletions, see MPEP § 2131.03. Baker et al. mention "37,972" in a digestion, see column 17, but does not include it with other digestions that would result in any of the instant deletions claimed. The reference also teaches "37,391 to 38239", but only as a non-assigned open reading frame (see Table 2B in column 23). Therefore, the reference does not anticipate or render the invention obvious.

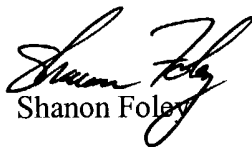
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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shanon Foley whose telephone number is (571) 272-0898. The examiner can normally be reached on M-F 9:30 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on (571) 272-0902. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Shanon Foley